

LEGISLATURE OF NEBRASKA
NINETY-EIGHTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 176

Introduced by Cunningham, 40; Bromm, 23; Friend, 10; McDonald, 41;
Mossey, 3; D. Pederson, 42; Stuhr, 24; Synowiecki, 7

Read first time January 10, 2003

Committee: Judiciary

A BILL

1 FOR AN ACT relating to controlled substances; to amend sections
2 29-431, 29-433, and 29-434, Reissue Revised Statutes of
3 Nebraska, and section 28-416, Revised Statutes
4 Supplement, 2002; to change provisions relating to
5 possession of marijuana; to harmonize provisions; and to
6 repeal the original sections.
7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 28-416, Revised Statutes Supplement,
2 2002, is amended to read:

3 28-416. (1) Except as authorized by the Uniform
4 Controlled Substances Act, it shall be unlawful for any person
5 knowingly or intentionally: (a) To manufacture, distribute,
6 deliver, dispense, or possess with intent to manufacture,
7 distribute, deliver, or dispense a controlled substance; or (b) to
8 create, distribute, or possess with intent to distribute a
9 counterfeit controlled substance.

10 (2) Except as provided in subsections (4), (5), (7), (8),
11 (9), and (10) of this section, any person who violates subsection
12 (1) of this section with respect to: (a) A controlled substance
13 classified in Schedule I, II, or III of section 28-405 which is an
14 exceptionally hazardous drug shall be guilty of a Class II felony;
15 (b) any other controlled substance classified in Schedule I, II, or
16 III of section 28-405 shall be guilty of a Class III felony; or (c)
17 a controlled substance classified in Schedule IV or V of section
18 28-405 shall be guilty of a Class IIIA felony.

19 (3) A person knowingly or intentionally possessing a
20 controlled substance, except marijuana, unless such substance was
21 obtained directly or pursuant to a medical order issued by a
22 practitioner authorized to prescribe while acting in the course of
23 his or her professional practice, or except as otherwise authorized
24 by the act, shall be guilty of a Class IV felony.

25 (4) (a) Except as authorized by the Uniform Controlled
26 Substances Act, any person eighteen years of age or older who
27 knowingly or intentionally manufactures, distributes, delivers,
28 dispenses, or possesses with intent to manufacture, distribute,

1 deliver, or dispense a controlled substance or a counterfeit
2 controlled substance (i) to a person under the age of eighteen
3 years, (ii) in, on, or within one thousand feet of the real
4 property comprising a public or private elementary, vocational, or
5 secondary school, a community college, a public or private college,
6 junior college, or university, or a playground, or (iii) within one
7 hundred feet of a public or private youth center, public swimming
8 pool, or video arcade facility shall be punished by the next higher
9 penalty classification than the penalty prescribed in subsection
10 (2), (7), (8), (9), or (10) of this section, depending upon the
11 controlled substance involved, for the first violation and for a
12 second or subsequent violation shall be punished by the next higher
13 penalty classification than that prescribed for a first violation
14 of this subsection, but in no event shall such person be punished
15 by a penalty greater than a Class IB felony.

16 (b) For purposes of this subsection:

17 (i) Playground shall mean any outdoor facility, including
18 any parking lot appurtenant to the facility, intended for
19 recreation, open to the public, and with any portion containing
20 three or more apparatus intended for the recreation of children,
21 including sliding boards, swingsets, and teeterboards;

22 (ii) Video arcade facility shall mean any facility
23 legally accessible to persons under eighteen years of age, intended
24 primarily for the use of pinball and video machines for amusement,
25 and containing a minimum of ten pinball or video machines; and

26 (iii) Youth center shall mean any recreational facility
27 or gymnasium, including any parking lot appurtenant to the facility
28 or gymnasium, intended primarily for use by persons under eighteen

1 years of age which regularly provides athletic, civic, or cultural
2 activities.

3 (5) (a) Except as authorized by the Uniform Controlled
4 Substances Act, it shall be unlawful for any person eighteen years
5 of age or older to knowingly and intentionally employ, hire, use,
6 cause, persuade, coax, induce, entice, seduce, or coerce any person
7 under the age of eighteen years to manufacture, transport,
8 distribute, carry, deliver, dispense, prepare for delivery, offer
9 for delivery, or possess with intent to do the same a controlled
10 substance or a counterfeit controlled substance.

11 (b) Except as authorized by the Uniform Controlled
12 Substances Act, it shall be unlawful for any person eighteen years
13 of age or older to knowingly and intentionally employ, hire, use,
14 cause, persuade, coax, induce, entice, seduce, or coerce any person
15 under the age of eighteen years to aid and abet any person in the
16 manufacture, transportation, distribution, carrying, delivery,
17 dispensing, preparation for delivery, offering for delivery, or
18 possession with intent to do the same of a controlled substance or
19 a counterfeit controlled substance.

20 (c) Any person who violates subdivision (a) or (b) of
21 this subsection shall be punished by the next higher penalty
22 classification than the penalty prescribed in subsection (2), (7),
23 (8), (9), or (10) of this section, depending upon the controlled
24 substance involved, for the first violation and for a second or
25 subsequent violation shall be punished by the next higher penalty
26 classification than that prescribed for a first violation of this
27 subsection, but in no event shall such person be punished by a
28 penalty greater than a Class IB felony.

1 (6) It shall not be a defense to prosecution for
2 violation of subsection (4) or (5) of this section that the
3 defendant did not know the age of the person through whom the
4 defendant violated such subsection.

5 (7) Any person who violates subsection (1) of this
6 section with respect to cocaine or any mixture or substance
7 containing a detectable amount of cocaine in a quantity of:

8 (a) One hundred forty grams or more shall be guilty of a
9 Class IB felony;

10 (b) At least twenty-eight grams but less than one hundred
11 forty grams shall be guilty of a Class IC felony; or

12 (c) At least ten grams but less than twenty-eight grams
13 shall be guilty of a Class ID felony.

14 (8) Any person who violates subsection (1) of this
15 section with respect to base cocaine (crack) or any mixture or
16 substance containing a detectable amount of base cocaine in a
17 quantity of:

18 (a) One hundred forty grams or more shall be guilty of a
19 Class IB felony;

20 (b) At least twenty-eight grams but less than one hundred
21 forty grams shall be guilty of a Class IC felony; or

22 (c) At least ten grams but less than twenty-eight grams
23 shall be guilty of a Class ID felony.

24 (9) Any person who violates subsection (1) of this
25 section with respect to heroin or any mixture or substance
26 containing a detectable amount of heroin in a quantity of:

27 (a) Five hundred grams or more shall be guilty of a Class
28 IB felony;

1 (b) One hundred grams or more but less than five hundred
2 grams shall be guilty of a Class IC felony; or

3 (c) Twenty-eight grams or more but less than one hundred
4 grams shall be guilty of a Class ID felony.

5 (10) Any person who violates subsection (1) of this
6 section with respect to amphetamine, its salts, optical isomers,
7 and salts of its isomers, or with respect to methamphetamine, its
8 salts, optical isomers, and salts of its isomers, in a quantity of:

9 (a) Sixteen ounces or more shall be guilty of a Class IC
10 felony;

11 (b) Seven ounces or more but less than sixteen ounces
12 shall be guilty of a Class ID felony; or

13 (c) Three and one-half ounces or more but less than seven
14 ounces shall be guilty of a Class II felony.

15 (11) Any person knowingly or intentionally possessing
16 marijuana weighing more than one ounce but not more than one pound
17 shall be guilty of a Class IIIA misdemeanor.

18 (12) Any person knowingly or intentionally possessing
19 marijuana weighing more than one pound shall be guilty of a Class
20 IV felony.

21 (13) Any person knowingly or intentionally possessing
22 marijuana weighing one ounce or less shall+

23 ~~(a) For the first offense, be guilty of a Class IV~~
24 ~~misdemeanor an infraction, receive a citation, be fined one hundred~~
25 ~~dollars, and be assigned to attend a course as prescribed in~~
26 ~~section 29-433 2 of this act~~ if the judge determines that attending
27 such course is in the best interest of the individual defendant. +

28 ~~(b) For the second offense, be guilty of a Class IV~~

1 ~~misdemeanor, receive a citation, and be fined two hundred dollars~~
2 ~~and may be imprisoned not to exceed five days, and~~

3 ~~(c) For the third and all subsequent offenses, be guilty~~
4 ~~of a Class IIIA misdemeanor, receive a citation, be fined three~~
5 ~~hundred dollars, and be imprisoned not to exceed seven days.~~

6 (14) Any person convicted of violating this section, if
7 placed on probation, shall, as a condition of probation,
8 satisfactorily attend and complete appropriate treatment and
9 counseling on drug abuse conducted by one of the community mental
10 health facilities as provided by Chapter 71, article 50, or other
11 licensed drug treatment facility.

12 (15) Any person convicted of violating subsection (1),
13 (2), or (3) of this section shall only become eligible for parole
14 upon the satisfactory attendance and completion of appropriate
15 treatment and counseling on drug abuse, except that any person
16 convicted of violating subsection (4), (5), (7), (8), (9), or (10)
17 of this section shall not be eligible for parole prior to serving
18 the mandatory minimum sentence.

19 (16) A person knowingly or intentionally possessing a
20 firearm while in violation of subsection (1) of this section or
21 while in possession of money used or intended to be used to
22 facilitate a violation of subsection (1) of this section shall be
23 guilty of a Class IV felony.

24 Sec. 2. Section 29-433, Reissue Revised Statutes of
25 Nebraska, is amended to read:

26 ~~29-433.~~ A person cited for ~~an infraction pursuant to a~~
27 violation of subsection (13) of section 28-416 ~~shall~~ may be
28 assigned to attend a course of instruction relating to the effects

1 of the misuse of drugs, including alcohol and controlled
2 substances. Such instruction shall include counseling on the
3 legal, medical, psychological, and social effects of drug use and
4 abuse. Such course shall consist of a minimum of five hours and a
5 maximum of ten hours of instruction and counseling. Upon
6 completion of the assigned course the instructor shall notify the
7 court in writing of such completion and the notification shall be
8 made a part of the record of the citation. Any person failing to
9 complete such course within thirty days after the assignment shall
10 be guilty of ~~an infraction~~ a Class IV misdemeanor.

11 Sec. 3. Section 29-434, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 ~~29-434.~~ All drug treatment centers established pursuant
14 to Chapter 71, article 50, shall provide the necessary facilities
15 and programs to carry out the provisions of section ~~29-433~~ 2 of
16 this act.

17 Sec. 4. Section 29-431, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 29-431. As used in sections ~~28-416,~~ 29-422, ~~29-424,~~
20 29-425, and 29-431 to ~~29-434~~ 29-438, unless the context otherwise
21 requires, infraction ~~shall mean~~ means the violation of any law,
22 ordinance, order, rule, or regulation, not including those related
23 to traffic, which is not otherwise declared to be a misdemeanor or
24 a felony. Infraction shall include violations of section 60-6,267.

25 Sec. 5. Original sections 29-431, 29-433, and 29-434,
26 Reissue Revised Statutes of Nebraska, and section 28-416, Revised
27 Statutes Supplement, 2002, are repealed.